

**FILED**

JUL 17 2008

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY McK  
DEPUTY CLERKUNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

THOMAS C. RUSHING III,

Defendant.

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CRIMINAL NO. \_\_\_\_\_

**A08 CR-255 SS (1)****FACTUAL BASIS**

Had this matter proceeded to trial, the United States Attorney for the Western District of Texas was prepared to prove the following facts beyond a reasonable doubt:

1. The Business Software Alliance provided information to Immigration and Customs Enforcement (ICE) concerning the unauthorized sale of pirated business computer software on several web sites. Subsequently, ICE, through Senior Special Agent Michael Godfrey, initiated an undercover investigation into the websites [www.valuesoftwaresales.com](http://www.valuesoftwaresales.com), [www.allsoftwaredownload.com](http://www.allsoftwaredownload.com), [www.esoftwarevalue.com](http://www.esoftwarevalue.com) and [www.pricelashsoftware.com](http://www.pricelashsoftware.com). ICE determined that Thomas C. Rushing III and others were associated with above-named websites that offered pirated business software for sale. Upon visiting one of the websites, customers could select which software they wanted to purchase. After providing payment information, customers were emailed a link that provided the ability to download the purchased software via the internet. Credit card payments for the pirated software were processed through Authorize.net through three accounts owned by the subjects. The websites were hosted by two different providers, while all of the

downloadable content was hosted on a separate computer server assigned IP address 72.51.35.11 on the network of ServerBeach. The websites offered a variety of products from software companies. Though four separate websites existed, no matter which website the pirated software was purchased from, the purchaser was directed to download the pirated software from the computer server(s) assigned IP address 72.51.35.11.

2. On January 9, 2007, SSA Godfrey, acting in an undercover capacity, visited the website [www.valuesoftwaresales.com](http://www.valuesoftwaresales.com) and purchased Adobe Creative Suite Premium CS2 for Windows for \$315.95. SSA Godfrey placed the product, Adobe Creative Suite Premium CS2, into the website shopping cart. SSA Godfrey then proceeded to the checkout portion of the website and entered the billing, shipping and credit card payment information. The software was downloaded from a computer assigned IP address 72.51.35.11, which resided on the network of ServerBeach. On January 24, 2007, agents made two (2) additional downloads of Adobe Creative Suite Premium CS2 from IP address 72.51.35.11.

3. On February 21, 2007 SA Godfrey purchased and downloaded the software title Macromedia Studio MX from the website [www.allsoftwaredownload.com](http://www.allsoftwaredownload.com) for \$89.95. The software was downloaded from a computer assigned IP address 72.51.35.11, which resides on the network of ServerBeach.

4. On February 21, 2007, SA Godfrey purchased and downloaded the software title Adobe Photoshop 8 from the website [www.priceslashsoftware.com](http://www.priceslashsoftware.com) for \$149.95. The software was downloaded from a computer assigned IP address 72.51.35.11, which resided on the network of ServerBeach.

5. On May 8, 2007 SA Godfrey purchased and downloaded the software title Adobe Acrobat 8.0 Professional from the website [www.esoftwarevalue.com](http://www.esoftwarevalue.com) for \$189.95. The software was downloaded from a computer assigned IP address 72.51.35.11, which resided on the network of ServerBeach.

6. On May 30th, 2007, SA Godfrey purchased and downloaded the software titles Adobe Photoshop 7 for \$95.95 and Adobe Photoshop CS2 for \$165.95 from the website [www.pricelashsoftware.com](http://www.pricelashsoftware.com) and purchased the CD mail delivery option for an additional \$70, for a grand total of \$331.90. The software titles were downloaded from a computer assigned IP address 72.51.35.11, which resides on the network of ServerBeach.

7. All of the above-mentioned websites utilized in the scheme were registered with domain registrant company GoDaddy, Inc.. The websites were either registered by Thomas Rushing or others acting in concert with Thomas Rushing.

8. Copies of Adobe Creative Suite Premium CS2 for Windows downloaded by SA Godfrey on January 9, 2007, Macromedia Studio MX downloaded by SA Godfrey on February 21, 2007, Adobe Photoshop 8 downloaded by SA Godfrey on February 21, 2007, Adobe Acrobat 8.0 Professional downloaded by SA Godfrey on May 8, 2007, Adobe Photoshop 7 and Adobe Photoshop CS2 downloaded by SA Godfrey on May 30, 2007, from the computer server associated with the IP address 72.51.35.11 and ServerBeach were provided to Adobe representatives for examination. Adobe representatives informed SA Godfrey that an examination of the copyrighted works established that the titles were substantially similar to the legally released copy and were unlawful infringing copies of Adobe's copyrighted works. In addition, Adobe representatives advised that the websites were not authorized to duplicate, replicate, or distribute Adobe's copyrighted works of

software.

9. On June 22, 2007, agents executed a search warrant for the electronic contents of the computer server associated with IP address 72.51.35.11 that was hosting the downloadable pirated content being sold in this scheme. Upon execution of the warrant, agents recovered an exact image of the computer server(s). A forensic examination of the computer server revealed that the server contained digital files of pirated copyright-protected software, including but not limited to the software titles purchased by SSA Godfrey in this investigation. The server contained a log file which showed the uploading of certain files to the server. Namely, the log files show that Adobe InDesign CS2, Adobe After Effects 7.0 Standard, Adobe Acrobat 8, Adobe Acrobat 3D, Adobe Framemaker 7 and Macromedia Studio 8 were uploaded to the ServerBeach server from IP address 66.90.155.209 belonging to Grande Communications and assigned to Thomas C. Rushing III at the time of each upload.

10. The above-described copyright infringement scheme utilized three (3) Authorize.net (a credit card gateway service) accounts to direct funds obtained from the sale of pirated software. In the course of this investigation, ICE analyzed the internet login history to the Authorize.net accounts utilized by the subjects. Rushing, and others acting in concert with Rushing, used their internet connections to repeatedly access the Authorize.net accounts which helped facilitate the transfer of proceeds from the sale of pirated software. Records relating to the Authorize.net account titled Premium Software Unlimited in the name of Thomas Rushing III indicate approved transactions totaling approximately \$863,995 for the time period of December 30, 2004, through May 9, 2007. Records relating to the Authorize.net accounts titled WLP Enterprises and Reliacorp Enterprises, controlled by Rushing and others acting in concert with the Rushing, indicate approved

transactions totaling approximately \$164,759 for the time period of February of 2006 through March 12, 2007 for the WLP Enterprises account and transactions totaling approximately \$241,037 for the time period August of 2006 through May 9th, 2007 for the Reliacorp Enterprises account. A very small percentage of these transactions from these accounts were subsequently charged back and/or refunded.

11. The infringement amount resulting from the charged offense exceeded \$1,000,000 but was less than \$2,500,000; As indicated in the plea agreement, both parties agree that this represents a reasonable estimate of the infringement amount. The agreed upon infringement amount represents a reasonable estimate of the retail value of the infringed copyrighted works pursuant to USSG Section 2B5.3, application note 2 (A)(i).

12. On or about December 30, 2004 , and continuing until on or about May 9th, 2007, in the Western District of Texas and elsewhere, Thomas C. Rushing III, did willfully, for the purpose of private financial gain, infringe the copyright of a copyrighted work, to wit, computer software, by reproducing and distributing during a 180-day period at least ten infringing copies of one or more copyrighted works with a total retail value of more than \$2,500, in violation of Title 17, United States Code, Section 506(a)(1)(A) and Title 18, United States Code, Section 2319(b)(1).

13. The Defendant agrees to forfeit all rights, title, and interest in any assets that the Defendant owns, possesses, or over which the Defendant exercises control, directly or indirectly, and any property that is traceable to, derived from, fungible with, or a substitute for property that constitutes proceeds of his criminal activity, including only the following specific property which the defendant admits are proceeds and/or facilitated the above-described criminal copyright infringement scheme, including only the following specific property:

a) One 2006 Porsche Cayenne bearing license plate number 123SWL and Vehicle Identification number WP1AB29P46LA69886 ;

b) All funds in Edward Jones account number 296-09751-1-4, in the name of Thomas Clayton Rushing;

c) All funds in Edward Jones account number 296-95988-1-8, in the name of Thomas Clayton Rushing;

d) All computers, hard drives, optical disc media, infringing works, contraband and documentary evidence seized from the Defendant and/or during the search of his residence on or about September 24th, 2007, including ; 1 Dell XPS desktop computer bearing serial number 3BPCG61, 1 Dell Inspiron 710m laptop bearing serial number RS063-A04, 1 generic desktop computer in Antec Case and 1 32" Dell LCD monitor bearing serial number 90GTZB1;


e) The forensic image(s) of the Server Beach computer server referenced above, including its electronic contents, seized pursuant to a search warrant executed on June 22nd, 2007.

f) The following domain names: valuesoftwaresales.com, allsoftwaredownload.com, esoftwarevalue.com and priceslashsoftware.com

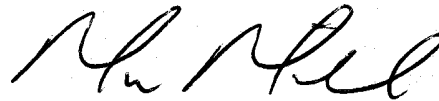
That, in summary, would be the evidence presented by the United States.

JOHNNY SUTTON  
United States Attorney

By:

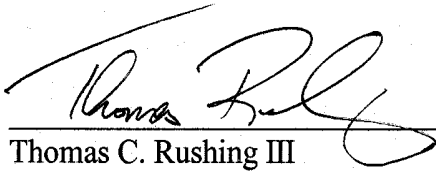


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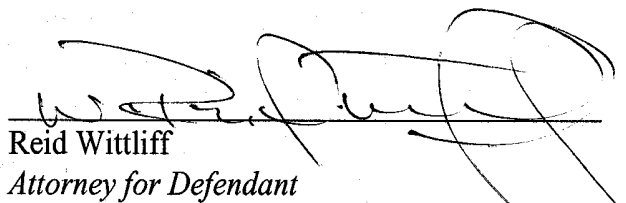


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I, Thomas C. Rushing III, have carefully read and reviewed the foregoing Factual Basis in its entirety, and have discussed it with my attorney. I freely and voluntarily admit that the statements contained in the Factual Basis are true and correct and accurately describe the facts and circumstances of the offense(s) to which I am pleading guilty. In addition, I freely and voluntarily admit that the allegations contained in Count One of the Information are true and correct and that I am guilty of those charges.

  
\_\_\_\_\_  
Thomas C. Rushing III  
Defendant

3-3-08  
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Date

  
\_\_\_\_\_  
Reid Wittliff  
Attorney for Defendant

3-3-08  
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Date